

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RAFAEL A. JONES,)	
)	
Plaintiff,)	
)	
v.)	No. 4:08CV1584 TIA
)	
DANIEL ISOM,)	
)	
Defendant.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court upon the application of Rafael A. Jones (registration no. N/A) for leave to commence this action without payment of the required filing fee. Plaintiff did not submit a certified inmate account statement; however, the Court notes that when plaintiff filed this action, he was incarcerated at the Medium Security Institution in St. Louis, Missouri. Since that time, plaintiff apparently has been released from custody. Given these facts, and because the Court will dismiss this action as legally frivolous, the Court will not assess a partial filing fee at this time.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis at any time if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

The complaint

Plaintiff seeks monetary and injunctive relief in this 42 U.S.C. § 1983 action against defendants Daniel Isom (St. Louis City Police Chief) and Mayor Francis Slay. Plaintiff alleges that it is against the law to use military weapons on civilians, nevertheless defendants Isom and Slay "continue[] to arm the St. Louis police departments an[d] officers with military weapons to be used against civilians." Plaintiff asks this Court to "relieve all military personnel of their duties."

Having carefully reviewed the complaint, the Court concludes that plaintiff's allegations do not rise to the level of a constitutional violation and fail to state a claim or cause of action under § 1983. As such, the complaint will be dismissed as legally frivolous.

In accordance with the foregoing,

IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint, because the complaint is legally frivolous and/or fails to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B).

An appropriate order shall accompany this memorandum and order.

Dated this 5th day of December, 2008.



UNITED STATES DISTRICT JUDGE